

## **DRAFT RECLAMATION MANUAL RELEASE**

**Comments on this draft release must be submitted to [owalker@usbr.gov](mailto:owalker@usbr.gov) by June 7, 2010.**

### **Background and Purpose of Draft Revision to Policy PEC P10**

Executive Order 13423, *Strengthening Federal Environmental, Energy and Transportation Management* (EO 13423), as amended and supplemented by Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance* (EO 13514), establishes requirements for systematic, comprehensive approaches to meeting environmental stewardship commitments. EO 13423 requires some Bureau of Reclamation water-related contracts to address these commitments, as they pertain to contractual responsibilities of the parties. Reclamation develops standard contract articles to cover contractual provisions that are required in its contracts. There are currently 32 of these standard articles, which are required in contracts according to type under Reclamation Manual<sup>1</sup> Policy PEC P10, paragraph 4, and which appear individually in Reclamation Manual D&S PEC 10-01 through PEC 10-32.

Reclamation has developed draft revisions to PEC P10, provided for review below, to require a proposed new standard article (Standard Article 33) in appropriate contracts. Standard Article 33 is addressed in a new draft D&S, PEC 10-33, which is available for review at <http://www.usbr.gov/recman/drafts/pec10-33webdraft.pdf>. Together, the draft revisions to PEC P10 and draft PEC 10-33 are designed to address requirements in EO 13423.

EO 13423 states:

“In implementing the policy set forth in section 1<sup>2</sup> of this order, the head of each agency shall \*\*\* ensure that contracts entered into after the date of this order for contractor operation of government-owned facilities or vehicles require the contractor to comply with the provisions of this order with respect to such facilities or vehicles to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.”

The Council on Environmental Quality’s *Instructions for Implementing Executive Order 13423* state:

“Where tenant, contractor, and concessionaire activities affect an agency’s environmental, transportation, or energy issues, those activities shall be addressed in the development, implementation, and maintenance of the EMS [Environmental Management System]. Requirements shall be included in all appropriate contracts to ensure that the contractors’ roles and responsibilities under the EMS are properly addressed. Where an agency owns or manages public lands on which non-governmental entities are present and whose activities are permitted, licensed, or otherwise authorized or regulated, that agency shall, at a minimum, consider the environmental impacts of such activities in its EMS.”

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<sup>1</sup> The Reclamation Manual is used to clarify program responsibility and authority and to document Reclamation-wide methods of doing business. All requirements in the Reclamation Manual are mandatory.

<sup>2</sup> “**Section 1. Policy.** It is the policy of the United States that Federal agencies conduct their environmental, transportation, and energy-related activities under the law in support of their respective missions in an environmentally, economically and fiscally sound, integrated, continuously improving, efficient, and sustainable manner.”

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Environmental Management Systems are required under EO 13423 as the framework in which agencies are to address their environmental impacts and achieve specific sustainability goals prescribe in the EO. Reclamation is addressing the requirement to implement EMS. In March, 2009, Reclamation issued RM D&S, *Environmental Management System Implementation* (ENV 05-01), to establish the requirements and responsibilities for EMS within the Bureau of Reclamation. Reclamation regions have primary responsibility for implementing EMS to address the environmental impacts of their activities and operations and have considered the activities and operations occurring in Reclamation-owned, contractor-managed facilities in the development of the EMS, as required. The purpose of the draft revisions to PEC P10, in coordination with proposed Standard Article 33 and draft PEC 10-33, is to comply with the requirement that appropriate contracts address the parties' roles and under EMS, including the environmental stewardship objectives of EO 13423 required to be addressed through EMS.

Please see draft revised PEC P10 below (last entry on chart at paragraph 4).

## Reclamation Manual

### Policy

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**Subject:** Reclamation Standard Water-Related Contract Articles

**Purpose:** States overall purpose of and general policy concerning Reclamation standard contract articles. The benefit of this policy, by itself, is that it clarifies, for Reclamation staff, contractors, and the public, the purpose and basic requirements for using the standard articles. In combination with the articles themselves, this policy promotes efficiency and consistency in negotiating and drafting Reclamation contracts.

**Authority:** The Reclamation Act of 1902 (Act of June 17, 1902, ch. 1093, 32 Stat. 388), and acts amendatory and supplementary thereto; various Federal statutes, executive orders, and regulations binding on Reclamation, specified as appropriate in reference to particular standard articles found in Reclamation Manual Directives and Standards, PEC 10-01, et seq.

**Approving Official:** Commissioner

**Contact:** Policy and Administration; Water and Environmental Resources Division, 84-55000

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1. **Introduction.** Reclamation has reduced certain contractual provisions to standard contract articles to foster consistency among contracts and efficiency in the contracting process. These provisions are required by various statutes, executive orders, regulations, and policies. Some are required in all Reclamation contracts. Some are required in all contracts of a given type. The standard articles appear in Reclamation Manual Directives and Standards PEC 10-01 through PEC 10-32, each headed by a brief explanation. The charts in paragraph 4 below match the respective articles to the contract types that are to include them.
2. **Inclusion Generally Not Negotiable.** Where this Reclamation Policy requires that any of the standard articles appear in a given type of contract, inclusion is generally not negotiable.
3. **Requests for Modification or Omission.** In some instances, a standard article may be modified or omitted, upon the Commissioner's approval. Requests for authority to modify or omit particular standard contract articles may be made within Bases of Negotiation for proposed contract actions or separately as the need arises during contract negotiations. Such requests will be considered on a case-by-case basis. A request must clearly state grounds, such as unintended or duplicative burdens on the contractor or that the article in question, as written, is inappropriate to the particular contract.

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PEC P10

## Reclamation Manual Policy

### 4. Standard Articles Chart.

Article		Contract Type														
#	Name	Long-Term								Short-Term						
		9c	9d, 9e	WSA	EF	130	984	D&MC	R&B	9c(2)	9e	WA1	WA2	215	SOD	O&M
<b>Project Construction</b>																
1	Contracts with Third Parties				X	X	X	X	X				X		B	
2	Failure to Complete Work				X	X	X	X	X				X		B	
<b>Repayment</b>																
3	Charges for Delinquent Payments	X	X	X	X	X	X		X			X	X		B	B
4	General Obligation—Benefits Conditioned Upon Payment	X	X	X	X	X	X		X			X	X		B	B
<b>Operation and Maintenance (O&amp;M)</b>																
O&M of Transferred Works—Payment of Miscellaneous Costs (+ Hold Harmless)																
5	• Federal Construction	O	O	O	O				O				O			X
6	• Federally Assisted Construction					X	X		X				X			X
7	Examination, Inspection, and Audit of Project Works, Records, and Reports	O	O	O	O	X	X		X				O		B	X
Reserve Fund (One of the Following)																
8	• Annual Deposit	X	X	X	O	X	X		O							X
9	• One-Time Deposit	X	X	X	O	X	X		O							X
<b>General Provisions</b>																
10	Confirmation of Contract	X	X	X	X	X	X		X			X	X		B	
11	Notices	X	X	X	X	X	X	X	X			X	X		B	B
12	Contingent On Appropriation or Allotment of Funds	X	X	X	X	X	X	X	X	X	X	X	X	X	B	X
13	Officials Not to Benefit	X	X	X	X	X	X	X	X	X	X	X	X	X	B	X
14	Changes in Contractor's Organization	X	X	X	B	X	X		B			X	X		B	X
15	Assignment Limited—Successors and Assigns Obligated	X	X	X	X	X	X	X	X	X	X	X	X	X		X
16	Books, Records, and Reports	X	X	X	X	X	X	B	B	X	X	X	X	X	B	B
17	Compliance with Federal Reclamation Laws/ Rules, Regulations, and Determinations/ Compliance with Small Reclamation Project Laws															
18	Administration of Federal Project Lands	O	O	O					O	O	O	O	O		O	X
19	Protection of Water and Air Quality	X	X	X		B			B	X	X	X	X	X		X
20	Contamination or Pollution of Federal Property	O	O	O		O	O		O	O	O	O	O			X
21	Clean Air and Water				X	X	X		X				O			X
22	Water Conservation	X	X	X	X	X	X		X			X	X			
Equal Employment Opportunity																
23	• Federal Construction	X	X	X	X				X	X	X	X	X	X	B	B
24	• Federally Assisted Construction					X	X	X	X				X		B	B
25*	Compliance with Civil Rights Laws and Regulations	X	X	X	B	X	X	B	B	X	X	X	X	X	B	B
26	Certification of Nonsegregated Facilities				B	X	X	B	B			X	X		B	B
27	Relocation Assistance and Real Property Acquisition					X	X		X				O			X
28*	Privacy Act Compliance		X			X	X		X		X					
29	Pest Management	O	O	O		O	O		O	O	O	O	O			X
30	Medium for Transmitting Payments	X	X	X	X	X	X	X	X	X	X	X	X	X	B	X
31	Contract Drafting Considerations	X	X	X	X	X	X	X	X	X	X	X	X	X	B	X
32	Constraints on Availability of Water	X	X	X			Y			X	X					
33	Environmental Stewardship	O	O	O		O	O		O			O	O			X

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**Reclamation Manual**  
Policy

**1/ Key to Abbreviations**

<b>Abbreviation</b>	<b>Authority</b>
9c(1)	Subsection 9(c) (1) of the Reclamation Project Act of August 4, 1939 (1939 Act) (Pub. L. 76-260), as amended (43 U.S.C. § 485h(c)) (Repayment contracts for municipal & miscellaneous water purposes).
9(c)(2)	Subsection 9(c) (2) of the Reclamation Project Act of August 4, 1939 (1939 Act) (Pub. L. 76-260), as amended (43 U.S.C. § 485h(c)) (Water service contracts for municipal & miscellaneous water purposes).
9d, 9e	Subsections 9(d) & (e) of the 1939 Act, as amended (43 U.S.C. § 485h(d) & (e)) (irrigation).
WSA	Water Supply Act of July 3, 1958 (Pub. L. 85-500, Title III), as amended (43 U.S.C. § 390b).
WA1	Section 1 of the Warren Act (Act of February 21, 1911, Pub. L. 61-406; 43 U.S.C. § 523) (secondary to project lands and entryman use of Federal facilities for storage or conveyance of nonproject water).
WA2	Section 2 of the Warren Act (43 U.S.C. § 524) (construction and/or use, not secondary to project lands or entryman, of facilities for storage or conveyance of nonproject water).
EF	Emergency Fund Act of June 26, 1948 (Pub. L. 80-790; 43 U.S.C. §§ 502 & 503).
130	Distribution Systems Loan Act of July 4, 1955 (Pub. L. 84-130), as amended (43 U.S.C. §§ 421a through 421d).
984	Small Reclamation Projects Act August 6, 1956 (Pub. L. 84-984), as amended (43 U.S.C. §§ 422a through 422k).
D&MC	Drainage & Minor Construction (Act of June 13, 1956, Pub. L. 84-575; 43 U.S.C. § 505) .
R&B	Rehabilitation & Betterment Act of October 7, 1949 (Pub. L. 81-335), as amended (43 U.S.C. § 504).
215	Section 215 of the Reclamation Reform Act of October 12, 1982 (Pub. L. 97-293, Title II), as amended (43 U.S.C. § 390oo) (temporary supply of water).
SOD	Reclamation Safety of Dams Act of 1978 (Pub. L. 95-578), as amended (43 U.S.C. §§ 506 through 509).

**2/ Article Symbols**

<b>Symbol</b>	<b>Meaning</b>
X	Required.
A	Required for all non-federal construction programs.
B	Can be included by reference to the basic contract which these contracts supplement, if consistent with prevailing standard articles.
O	Use when the operational responsibility has been transferred to the Contractor or will be transferred at the time of contract execution.
Y	Required if Reclamation provides the water supply.

**Note**

\* Not required in contracts if the contractor is also the water user.